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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No.

PANHANDLE EASTERN PIPE LINE COMPANY

and

NATIONAL HELIUM CORPORATION,

Petitioners,

v.

MOBIL OIL CORPORATION, ET AL.,

and

RALPH GROUNDS, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioners Panhandle Eastern Pipe Line Company and National Helium Corporation respectfully pray that a writ of certiorari issue to review the judgments and opinion of the United States Court of Appeals for the Tenth Circuit entered in these proceedings on March 2, 1971.

OPINIONS BELOW

The United States District Court for the District of Kansas rendered an unreported opinion concluding that it had jurisdiction of the interpleader actions involved herein. The decision of the Court of Appeals for the Tenth Circuit affirming that decision *per curiam* is reported at 327 F. 2d 1003. The opinion of the District Court for the District of Kansas on the merits is reported at 292 F. Supp. 619. The opinion of the Court of Appeals for the Tenth Circuit on the merits is reported at 441 F. 2d 704.[1]

JURISDICTION

The judgments of the Court of Appeals for the Tenth Circuit were entered on March 2, 1971. Timely petitions for rehearing were denied on May 20, 1971, and this petition for certiorari was filed within ninety days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

QUESTIONS PRESENTED

1. (A) Whether routine Federal Power Commission regulation of producer sales under the Natural Gas Act is so inconsistent with the Helium Act Amendments of 1960 as to warrant judicial intervention releasing the helium constituent of helium-bearing natural gas from the contractual limitations applicable to the balance of the gas stream; and, if so,

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[1] Each of these opinions is set forth in the separate printed appendix filed in connection with the concurrent petition for writ of certiorari styled *Northern Natural Gas Company, et al.*, v. *Mobil Oil Corporation, et al.* Lettered appendix references herein are to that appendix.

(B) Whether the same result applies in factual situations such as Petitioners' where Federal Power Commission regulation has not in fact deprived producers of any revenues.

2. Whether there is any valid basis in the Helium Act Amendments of 1960 or otherwise for abrogating the right of the pipelines to protection under the warranty and indemnity provisions of gas purchase contracts by which they purchase helium-bearing natural gas from producers.

3. Should certiorari be granted, Petitioners preserve the question of whether the Court of Appeals had jurisdiction to grant *quantum meruit* relief with respect to portions of helium-bearing natural gas already covered by the pricing provisions of gas purchase contracts with producers.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

Constitution of the United States, Fifth Amendment.

Natural Gas Act, 52 Stat. 821, as amended, 15 U.S.C. § 717 et seq.

Section 11 of the Helium Act Amendments of 1960, 74 Stat. 922, 50 U.S.C. § 167i.

The pertinent text of the foregoing is set forth in Appendix K.

STATEMENT OF THE CASE

Helium is a commodity of unique application and of ever increasing utility and value to national defense, science, industry and the ecology. These eight actions, which have come to be known as the "consolidated helium cases", involve 99% of the nation's recoverable supply of helium.[2]

Throughout the proceedings below, the parties have for convenience been categorized as follows: the "landowners," consisting of over 1000 named parties purporting to represent the more than 30,000 persons who granted the oil and gas leases under which the helium-bearing natural gas involved was produced; the "lessee-producers" (herein "producers"), consisting of numerous named parties as representatives of the more than 500 independent producers who produce the helium-bearing natural gas and deliver it to natural gas transmission companies (the "pipelines"); the "Helex group", composed of the pipelines and their affiliated helium extraction ("helex") companies, including Panhandle Eastern Pipe Line Company ("Panhandle") and its affiliate, National Helium Corporation ("National Helium"); and the United States.

The helium involved is a constituent of natural gas produced from an area known as the Hugoton Gas Area. The Hugoton area includes parts of Texas, Oklahoma and Kansas, measures approximately 210 miles from north to south and 160 miles from east to west, and includes some 33,000 square miles and over

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[2] Except where expressly noted, the facts set forth are summarized from the extensive findings made by the District Court. Appendix B. The Court of Appeals found that no material dispute existed as to the determinative facts as so found. Appendix A, 7a.

21 million acres. The producers produce the helium-bearing natural gas under the leases granted by the landowners and deliver the natural gas to the pipelines under gas purchase contracts which are filed with the Federal Power Commission (FPC).[3] The pipeline companies operating in the Hugoton area transport natural gas throughout the mid-continental United States for resale to local distributing companies for ultimate public consumption and directly to industries and to others for their own use. Both the producers and the pipeline companies are "natural gas companies" within the meaning of the Natural Gas Act. 52 Stat. 821, 15 U.S.C. § 717 et seq.

Unless conserved, the helium contained in natural gas carried to market by the pipelines is dissipated into the atmosphere when the natural gas is used by the ultimate consumer. By the early 1950's, helium had begun to play an increasingly important role in a number of activities, including the aerospace effort, and concern began to mount regarding this wastage —estimated by an Office of Defense Mobilization report at 7,000,000 cubic feet of helium per day. Helium conservation was being accomplished solely by the federal government and on a rather modest basis. Following six years of governmental concern over the inadequate level of helium conservation, the Helium Act Amendments of 1960 were enacted. 74 Stat. 918, 50 U.S.C. §§ 167-167n. The Helium Act Amendments authorize the Secretary of the Interior to enter into long term contracts for the acquisition of helium and subsequent negotiations re-

[3] Additional specific facts in regard to the gas purchase contracts involved, particularly certain of those to which Panhandle is a party, are set forth in connection with the discussion hereinafter.

sulted in the execution of helium supply contracts with the helium extraction affiliates of Northern Natural Gas Company and Cities Service Gas Company, with National Helium, which is owned equally by Panhandle and National Distillers and Chemical Corporation, and with Phillips Petroleum Company.

As the helium extraction plants built by the helex companies to effectuate the helium supply contracts were being completed and placed in operation, landowners initiated a number of state court actions, as well as two federal court actions against the United States, claiming ownership of the helium constituent of the helium-bearing natural gas stream to be processed in the plants. In view of the present and prospective multiplicity of actions in several state and federal courts, the pipelines and their affiliated helex companies instituted the six interpleader actions involved herein to, in effect, confirm their ownership of the helium constituent.[4]

The determination of the United States District Court for the District of Kansas that it had jurisdiction of the interpleader actions brought under 28 U.S.C. Section 1335, Appendix E, was affirmed by the Court of Appeals for the Tenth Circuit. *Grounds* v. *Northern Natural Gas Company,* 327 F. 2d 1003 (10th Cir. 1964). Appendix D. These cases were

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[4] Four were brought by Cities Service Gas Company (later joined by its affiliates Cities Service Helex, Inc. and Cities Service Cryogenics, Inc.) and one by Northern Natural Gas Company and its subsidiary Northern Helex Company against the landowners and producers. National Helium's interpleader action was instituted against Panhandle as well as the landowners. In the latter case, Panhandle also filed a third-party complaint against the producers to enforce its rights under the warranty and indemnity provisions of its gas purchase contracts with them.

consolidated with the suits initiated by landowners against the United States, one under the Federal Tort Claims Act, 28 U.S.C. Section 1346 (b), on the theory of conversion as a result of its purchases of helium-gas mixture from the helex companies, and the other under the Tucker Act, 28 U.S.C. Section 1346(a)(2), on mixed theories of third-party beneficiary rights and reverse condemnation. The helex companies were named by the United States as third-party defendants in both cases as a result of their possible liability under the warranty and indemnity provisions of the helium supply contracts, which provide that the helex companies are to bear responsibility for satisfaction or settlement of ownership claims to helium purchased by the United States up to an amount per Mcf determinable under the contracts, with the United States to be liable for any excess over that amount. All cases were determined by the District Court to be proper class actions under Rule 23, Federal Rules of Civil Procedure.

The trial in the District Court dealt with the question of liability, the District Court having reserved the matter of damages, if any, for a subsequent phase. During the lengthy trial proceedings, separate presentations were made by the landowners, the producers and the Helex group with respect to ownership and with respect to the applicability and effect of the Natural Gas Act and the Helium Act Amendments of 1960.[5]

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[5] The primary claim of the landowners was that title to the helium constituent did not pass to the producers by the oil and gas leases under which the helium-bearing natural gas was produced. The producers claimed that title to the helium constituent did pass to them but did not pass from them to the pipelines under

The trial court held that the leases conveyed title to the helium constituent from the landowners to the producers and that the gas purchase contracts conveyed title from the producers to the pipelines. Accordingly, the court awarded the interpleader funds to the Helex group and dismissed the landowners' claims against the United States. Appendix B. The District Court denied recovery of costs to the prevailing parties, awarded costs and attorney's fees to the unsuccessful claimants, and taxed costs against the fund. Appendix C. A total of 88 appeals were taken with respect to the District Court's decision on the merits and its order in regard to costs.

The Court of Appeals for the Tenth Circuit, while agreeing with the District Court that title to the helium passed under the leases and again under the gas purchase contracts, nevertheless held that the producers are entitled to recover in *quantum meruit* for the value of the helium extracted from the gas streams and that the landowners are entitled to royalty on that value. The decision is premised upon the concept that the price applicable to the sale of gas streams containing helium is regulated by the Federal Power Commission under "service rates" which "nullify" certain pricing provisions of the producer contracts. Appendix A. The Court of Appeals denied motions for rehearing on May 20, 1971 without further discussion. Appendix H.

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the gas purchase contracts filed with the FPC. The pipelines claimed that the producers transferred title to the entire gas stream, including the helium constituent and, in the event of failure of title, that the producers were liable for all damages and costs incurred by the pipelines under the producer warranties.

REASONS FOR GRANTING THE WRIT

1. AN IMPORTANT QUESTION OF FEDERAL LAW IS PRESENTED BY THE HOLDING OF THE COURT OF APPEALS THAT PRODUCERS OF HELIUM-BEARING NATURAL GAS FALL INTO A "VOID" SO THAT THE SALE OF THE HELIUM CONSTITUENT OF SUCH GAS IS NOT GOVERNED BY EITHER THE FEDERAL POWER COMMISSION OR BY THE CONTRACTS BY WHICH THE HELIUM-BEARING NATURAL GAS IS SOLD.

The basic purpose of the Helium Act Amendments of 1960 was to institute a comprehensive program for conserving helium contained in the gas streams already being produced from the Hugoton area and delivered to natural gas transmission pipelines. As was noted by the Court of Appeals, the contracts under which the pipelines obtained the helium-bearing gas had virtually all been executed long before 1960, Appendix A, 30a, although the pipelines had not previously undertaken the extraction of the helium component from their gas streams.

At the time of enactment of the conservation statute, it was recognized by Congress that natural gas pipeline operations, including resale rates, were subject to Federal Power Commission jurisdiction under the Natural Gas Act, as were producer resale rates. Thus, Section 11 of the Helium Act Amendments of 1960 states that the provisions of the Natural Gas Act "shall not be applicable to the sale, extraction, processing, transportation or storage of helium," in order to encourage commitment of the helium to the government's conservation program. 50 U.S.C. 167i.

It would seem clear that the protection of this provision was primarily intended for the benefit of the pipelines, since they had not committed the helium constituent to any market, rather than for the benefit of

the producers, whose helium-bearing natural gas was already subject to sales contracts with the pipelines. It may well be, as the Court of Appeals suggests, that Congress did not intend to "deprive" the producers of such benefits as they could achieve in *new* contracts for the sale of helium or helium-bearing gas, but this cannot be parlayed into a right to obtain more than the contract price for what they were already selling.

In fact, the Helium Act Amendments were not intended to abrogate the contracts between pipelines and producers to any extent, but rather just the contrary. Thus, Section 11 undertook to establish private contract as the determining factor for fixing the amount to be paid for helium "whenever helium is extracted from helium-bearing natural gas." 50 U.S.C. § 167i.

Nevertheless, the approach followed by the Court of Appeals would indeed abrogate the pre-existing contract rights of the pipelines to acquire helium-bearing natural gas and compel the pipelines to pay the producers a subsequently-determined "reasonable value" in addition to the contract price already paid them. Clearly this is not the law.[6] Furthermore, there has been no showing, and there is no possibility of a future showing, of any of the "circumstances of unequivocal public necessity" prerequisite to abrogation of contractual limitations voluntarily entered into. *Permian Basin Area Rate Cases,* 390 U.S. 747, 822.

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[6] In *Panhandle Eastern Pipe Line Co.* v. *Federal Power Com'n,* 359 F. 2d 675, 679 (8th Cir. 1966), the court held that it is necessary to interpret Section 11 of the Helium Act Amendments of 1960 and the provisions of the Natural Gas Act together so as to produce a "symmetrical whole".

The insurmountable legal impediments aside, there is no rational legislative purpose which would be served by transferring the "value" of the helium from those who purchased it (the pipelines), or the helex companies, to the producers. Having committed their helium-bearing gas to the pipelines some twenty to thirty years ago, and in the absence of any intent by the producers to construct or operate any helium extraction plants, a monetary award to them would in no way serve the Congressional objective "to encourage private participation in the helium program," as the Court of Appeals mistakenly assumed. Appendix A, 31a.[7]

Finally, the Court' reliance upon the so-called statutory "void" will not withstand analysis. The void is said to result from the fact that "neither the FPC nor the Bureau of Mines has jurisdiction over the helium value of the natural gas." Appendix A, 36a. However, it was the Court of Appeals which was preoccupied with bestowing a "helium value," whereas the Helium Act Amendments relate to contract prices and the Natural Gas Act relates to regulated prices—in many instances the same as contract prices. It is surely not a basis for valid decision in this case that some price provisions of some producer gas contracts "have been largely nullified by FPC regulations." Appendix A, 35a.

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[7] One producer, Phillips Petroleum Company, did install helium extraction facilities under the program, but that company was aligned with Petitioners, rather than the other producers, in the proceedings below.

II. THE RIGHTS OF THE PIPELINES UNDER THE GAS PURCHASE CONTRACTS INVOLVED HAVE BEEN ABROGATED NOT ONLY AS TO PRICE PROTECTION BUT ALSO AS TO WARRANTY AND INDEMNITY PROVISIONS.

The Court of Appeals decision sanctioned producer avoidance of (1) contract price limitations applicable to all portions of the gas stream, by permitting separate valuation of the helium constituent, and (2) contractual warranty and indemnity provisions, by failing to require their enforcement.[8]

Although the decision undertook to justify the allowance of additional payment for the helium in terms of redress for Federal Power Commission interference with the commercial relationship between the parties,

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[8] The typical warranty and indemnity provision in Panhandle's gas purchase contracts is set forth below:

Seller agrees and it hereby does warrant that at the time of delivery it will have good title to all gas delivered by it to Buyer, hereunder, free and clear of all liens, encumbrances, claims whatsoever, that at such time of delivery it will have good right and title to sell said gas aforesaid, and that it will indemnify Buyer and save it harmless from all suits actions, debts, accounts, damages, costs, losses, and expenses arising from or out of adverse claims of any or all persons to said gas or to royalties, taxes, license fees or charges thereon which are applicable before the title to the gas passes to Buyer. In the event any adverse claim of any character whatsoever is asserted in respect of any of said gas, Buyer may retain the purchase price thereof up to the amount of such claim without interest until such claim has been fully determined, as security for the performance of Seller's obligations with respect to such claim under this Article, or until Seller shall have furnished bond to Buyer in an amount and with sureties satisfactory to Buyer, conditioned for the protection of Buyer with respect to such claim. In addition, if Buyer is made the party to any suit, claim or demand in respect to title of the gas delivered by Seller, Buyer, at its option, may require Seller to defend the same in its stead or to reimburse Buyer for all costs, fees, and other expenses incident to said defense. R. (App., Vol. VII) 2032-2034, 2037-2040, 2054.

not even this form of rationalization has been offered for failure to permit the pipelines to exercise the warranty and indemnity rights granted under their contracts with the producers. Instead, the court brushed aside this important issue and its immense dollar impact with a single paragraph denying, for unstated reasons, any recovery under this provision of the contracts. Its basis for doing so is totally unclear. Appendix A, 37a-38a.

The consequence of this treatment is to impose upon Panhandle and National Helium the undeserved expense of defending against challenges to their title to the helium—an issue ultimately decided in their favor—and to absolve the producers from their obligation to reimburse Petitioners for costs incurred in that defense. The net of the matter is that the Court of Appeals decision compounds the losses from the *quantum meruit* award with still further burdens from which they had sought to protect themselves by contract. This oppressive result should be overturned.

III. THE BASIS OF THE COURT OF APPEALS DECISION THAT THE CONTRACTUAL ARRANGEMENTS "HAVE BEEN LARGELY NULLIFIED BY FPC REGULATIONS" IS IN CONFLICT WITH THIS COURT'S TEACHINGS AND WITH THE FACTS PERTAINING TO A LARGE PORTION OF PANHANDLE'S GAS SUPPLIES.

In *United Gas Pipe Line Company* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1955), this Court held in construing the Natural Gas Act that "it evinces no purpose to abrogate private rate contracts as such. To the contrary, by requiring contracts to be filed with the Commission, the Act expressly recognizes that rates to particular customers may be set by individual contracts." 350 U.S. 332, 338. These principles have been reiterated by the Court in other subsequent cases

in which the obligations of producers under the Act have been placed in issue. *E.g., Sunray Mid-Continent Oil Co.* v. *FPC,* 364 U.S. 137 (1960) and *Permian Basin Area Rate Cases,* 390 U.S. 747 (1968), both of which arose in the Tenth Circuit Court of Appeals.

In light of these cases and the industry's experience under the Natural Gas Act since independent producer regulation originated in 1954, it was erroneous and inappropriate for the Court of Appeals to rest its reversal of the District Court upon the premise that gas purchase contract provisions "have been largely nullified by FPC regulations." Appendix A, 35a. Not only is the premise inconsistent with this Court's teachings, but it is clearly improper to award millions to producers at the expense of this handful of helex companies in order to redress producers for past losses they may have suffered at the hands of regulation.

However, this apart, Panhandle can readily demonstrate that federal regulation of much of its interstate gas supplies has in no way resulted in "nullification" or losses to producers through non-recognition of their contract prices. Thus, with respect to a large portion of the supply here involved, the reasoning of the Court of Appeals' opinion will not withstand the test of practical application, as we now show.

A. Where the Price Specified in the Producer Contract Is Lower Than the FPC Ceiling Rate

The Court of Appeals, in a context fundamental to its decision, has reasoned that although the Natural Gas Act "does not abrogate private rate contracts as such . . . it makes fundamental changes in those contracts," that "although the contracts are not abrogated, their provisions on price and term are superseded by

FPC regulation," and that "private contract law and the principles applicable thereto are not controlling." Appendix A, 32a, 33a, 35a. The error in basing the decision on this line of reasoning is exposed by examining the numerous gas purchase contracts involved to which Panhandle is a party whereunder the effective price paid by Panhandle has not been restricted by FPC regulation. As a matter of fact, under some 87 Panhandle gas purchase contracts, covering nearly 500,000 acres, the contract price being paid was in fact *lower* than the maximum permissible FPC price, and the contracts were therefore unaffected by FPC price ceilings. A schedule of these contracts is appended hereto.

There obviously is no justification for the Court of Appeals to award amounts beyond contract price levels on the theory that FPC regulation has denied the producers rights under such contracts. It is conceivable that future price escalations in some instances may be affected by FPC-established rates, but this does not justify judicial intervention with respect to these contracts. In the foregoing situations, the producer has received everything for which it bargained, notwithstanding the existence of regulation generally. To confer upon such a producer the full value of the helium constitutent in addition is clearly a windfall at the expense of the subsequent purchasers of the gas stream.

B. Where the Producer Contract Deals Specifically With Extraction of Helium From the Gas Stream

Another class of contracts ignored by the Court of Appeals opinion are those entered into after the possibility of helium extraction and the helium conservation program were well known, in which the producers

and Panhandle contracted with specific reference to the helium constituent of the helium-bearing natural gas being sold thereunder. Such contracts, which are estimated to cover helium-bearing natural gas from some 225,000 acres being purchased by Panhandle alone, typically contain the following relevant language (summarized):

> Seller may elect . . . to extract or cause to be extracted liquefiable hydrocarbons from the gas delivered to Buyer by means of a processing plant near Buyer's gathering system . . . Seller also reserves the right to elect to extract helium and other inert gases removed in helium extraction . . . If hydrocarbon processing is timely commenced, then the right to extract helium shall continue as long as that plant is in operation. Also, at any time, Seller has the right to extract helium at the wellhead prior to first delivery to Buyer. If Seller does not extract helium at such plant or at the wellhead, it releases all further claim to the helium in the gas delivered to Buyer. R. (App., Vol. VII) 2035, 2036, 2055.

In such contracts, the matter of helium processing is a specific convenant completely separate and independent from any pricing provisions of the contract. To the date of trial, no producer had elected to exercise the option to extract helium under these contracts. More importantly, there was to be no diminution of price if the seller did elect to extract the helium, nor was there any increase if he waived his extraction opportunities. Application of the generalized holding of the Court of Appeals to this class of contracts, in the face of a specific contract provision on the point bargained for by the parties and absent any loss from FPC regulation, is so unwarranted as to constitute

a denial of due process of law to the pipeline involved.

C. Where the Producer Contract Has Been Exempted From Regulation as to Price and Term

Another category of contracts apparently within the coverage of the court's decision, even though unaffected by FPC regulation, resulted from an FPC proceeding which was nearing conclusion at the very time the Court of Appeals issued its opinion in the present litigation. The circumstances surrounding such contracts, while not unique to Panhandle, further becloud the entire premise from which the Court of Appeals reasoned.

On March 18, 1971, the Federal Power Commission ruled in Order No. 428, Docket No. R-393, that small independent producers (those selling less than 10,000,000 Mcf of gas per year) would be substantially exempt from regulation under the Natural Gas Act. Under this ruling, a small producer may collect the contractually agreed price from the purchasing pipeline without being required to obtain FPC approval and without any potential refund obligation.

Since there are no regulatory restrictions upon the contract price (except that indefinite escalations are prohibited), the small producer is now in the same circumstance with respect to helium-bearing natural gas as it was prior to the advent of FPC regulation of producer sales in 1954. Again, it would certainly be unjustifiable to require additional sums to be paid to producers based on restrictive FPC regulation when such regulation is in fact inapplicable to producers of the class in question.

D. Where Panhandle Itself Is the Lessee and Takes Its Gas Into Its System Without a Producer Contract

Panhandle is the "lessee-producer" of 20% to 25% of the gas necessary to fulfill its own supply requirements. Since the Court of Appeals has held without qualification that the oil and gas leases pass title of the helium constituent to the lessee-producers, Panhandle becomes the unquestioned owner of the full helium-bearing gas stream when it is produced. Without the intervention of a gas purchase contract, rate schedule or other regulatory activity, Panhandle delivers (but does not sell) the entire gas stream for processing under a helium extraction agreement. R. (App., Vol. V) 1523-1528. Thus, the circumstance of restrictive contract regulation is also absent in the case of Panhandle's own produced gas, which has at all times borne a proper royalty. The very fact that still another significant portion of the gas involved in this litigation is free from FPC producer regulation, upon which the Court of Appeals opinion was based, further demonstrates the lack of logical basis for the decision.

IV. THE ISSUES INVOLVED SHOULD BE RESOLVED BY THIS COURT AT THIS TIME BECAUSE OF THE MAJOR IMPACT OF THE PRESENT CASE AND BECAUSE IT IS CENTRAL TO OTHER MAJOR CASES PENDING IN THE FEDERAL COURTS.

This Court's consideration of the issues presented here would be warranted by the size, importance, and monetary impact of these consolidated cases alone. As was noted below, however, a number of massive actions were stayed during the lengthy period this group of cases was being litigated, and still others have since been initiated. The overall benefit to the judicial system of a definitive ruling from this Court at this time cannot be gainsaid.

Insofar as the instant consolidated cases are concerned, they involved an estimated $125 million at the time of the trial, and with the passage of time, this amount undoubtedly has increased. The number of parties directly affected is alone an impressive compendium. In addition to the Helex group, there are more than 1000 named parties in the landowner group, said to represent a class of over 30,000 persons, and the numerous major producers in whose favor the Court of Appeals ruled represent a class of several hundred other producers. The United States is also a prominent party to the litigation and a potential major monetary contributor if the ultimate award to producers should exceed levels specified in the contracts between the Government and the helex companies.

Of equivalent significance perhaps are the other cases which have not yet been tried, even on the liability phase. These massive class actions include *Gigot, et al.* v. *Cities Service Oil Co. et al.*, No. W-4611; *Gore, et al.* v. *Amerada Hess Corp. et al.*, No. W-4612; and *Brown, et al.* v. *Mobil Oil Corporation, et al.*, No. W-4613, all recently filed by landowners in Kansas state courts and since removed to the United States District Court for the District of Kansas. *Texaco, Inc.* v. *Kansas-Nebraska Natural Gas Company, Inc.*, Civ. 71-453, another case involving similar issues initiated by a major producer, is pending in the United States District Court for the Western District of Oklahoma. The guidance which would be provided for these and other cases presently pending and to follow adds urgency to the petitions here presented.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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August 17, 1971

APPENDIX

SCHEDULE OF PANHANDLE GAS PURCHASE CONTRACT PRICES BEING PAID WHICH WERE LOWER THAN THE MAXIMUM PERMITTED BY THE FPC.

Seller and Date of Contract	Acreage Dedicated	Initial Contract Price	Contract Price which was being paid at Date of Trial	Maximum Contract Price Permitted by FPC Order #586*	Lessee-Producer Exhibit No.
ASHLAND OIL & REFINING					
11-19-53 Kans.	1,395.50	15.0¢	17.0¢	17.5¢	Ashland # 9
11-19-53 Okla.	7,320.03	15.0¢	17.0¢	18.5¢	Ashland # 8
4-16-56	3,310.00	15.0¢	17.0¢	19.0¢	Ashland #11
11- 1-58	9,520.00	11.0¢	12.0¢	12.5¢	Ashland #12
4- 6-60	74,461.93	16.0¢	17.0¢	17.5¢	Ashland #14
5-25-60	440.00	16.0¢	17.0¢	17.5¢	Ashland #13
2- 9-61	480.00	16.0¢	17.0¢	18.5¢	Ashland #15
10-20-61	1,360.00	16.0¢	17.0¢	17.5¢	Ashland #16
CABOT CORPORATION					
10-15-56	120.00	16.0¢	18.0¢	18.5¢	Cabot # 3
3-15-58	480.00	16.0¢	17.0¢	19.0¢	Cabot # 7
4- 2-62	4,245.50	11.0¢	12.0¢	13.5¢	Cabot #14
9-25-63	640.00	17.0¢	17.0¢	18.5¢	Cabot # 6
6-23-64	560.00	17.0¢	17.0¢	18.5¢	Cabot # 9
4-16-6[illegible]	640.00	17.0¢	17.0¢	18.5¢	Cabot #10
CITIES SERVICE OIL COMPANY					
3-21-56	800.00	15.0¢	15.0¢	17.5¢	Cities Service Oil Exhibits 1 to 16
1- 1-57	1,280.00	15.0¢	15.0¢	18.5¢	
			15.0¢	17.5¢	
2- 7-57	40.00	16.0¢	17.0¢	17.5¢	
7- 3-58	320.00	12.0¢	13.0¢	13.25¢	
6-21-59	720.00	11.0¢	12.0¢	12.5¢	
3-21-60	35,600.89	11.0¢	12.0¢	12.5¢	
		16.0¢	16.0¢	17.5¢	
3-24-60	87,560.29	17.0¢	17.0¢	18.5¢	
3- 3-61	1,600.00	16.0¢	16.0¢	18.5¢	
1-22-65	10,906.81	17.0¢	17.0¢	18.5¢	

* Hugoton-Anadarko Area Rate Proceeding.

APPENDIX (Continued)

Seller and Date of Contract	Acreage Dedicated	Initial Contract Price	Contract Price which was being paid at Date of Trial	Maximum Contract Price Permitted by FPC Order #586	Lessee-Producer Exhibit No.
COLUMBIAN FUEL CORPORATION					
11-19-53 (Kans.)	1,395.50	15.0¢	17.0¢	17.5¢	Columbian Exhibits 1 to 9
11-19-53 (Okla.)	7,320.03	15.0¢	17.0¢	18.5¢	
10- 1-57	19.20	12.0¢	12.0¢	12.5¢	
2- 2-59	43,875.26	11.0¢	12.0¢	12.5¢	
		11.0¢	12.0¢	17.5¢	
3-17-61	80.00	16.0¢	16.0¢	18.5¢	
6- 7-61	336.93	11.0¢	12.0025¢	12.5¢	
2-18-63	80.00	16.0¢	16.0¢	18.5¢	
4-22-63	211.71	17.0¢	17.0¢	18.5¢	
DORCHESTER GAS PRODUCING CO.					
1- 1-61	8,832.00	11.0¢	12.0¢	12.5¢	Dorchester #4
GULF OIL CORPORATION					
6-29-56	480.00	15.0¢	16.0¢	18.5¢	Helex Ex. 83, 84, 85
12-21-56	480.00	15.0¢	16.0¢	18.5¢	
6-14-57	160.00	15.0¢	16.0¢	18.5¢	
4-21-59	186.45	16.0¢	16.0¢	18.5¢	
6-10-59	60.00	16.4¢	16.4¢	18.5¢	
5-19-60	160.00	16.0¢	16.0¢	18.5¢	
3- 5-62	160.00	17.0¢	17.0¢	18.5¢	
2- 1-65	3,542.00	17.0¢	17.0¢	19.0¢	
3-18-66	480.00	17.0¢	17.0¢	18.5¢	
11-11-66	653.00	17.0¢	17.0¢	19.0¢	
HELMERICH & PAYNE, INC.					
9- 1-59	1,280.46	11.0¢	12.0¢	12.5¢	Helmerich & Payne #10

APPENDIX (Continued)

Seller and Date of Contract	Acreage Dedicated	Initial Contract Price	Contract Price which was being paid at Date of Trial	Maximum Contract Price Permitted by FPC Order #586	Lessee-Producer Exhibit No.
MOBIL OIL CORPORATION					
5-13-47	8,320.00	11.0¢	12.54¢	13.5¢	Helex Ex. 83, 84, 85
10- 1-56	1,200.00	16.0¢	18.0¢	19.0¢	
12-22-59	80.00	15.0¢	15.0¢	18.5¢	
1--22-60	41,112.24	17.0¢	17.0¢	18.5¢	
7-13-60	80.00	17.0¢	17.0¢	18.5¢	
7-21-60	160.00	11.0¢	12.0¢	12.5¢	
8-15-60	476.24	11.0¢	12.0¢	12.5¢	
12-19-60 (Shallow)	160.00	11.0¢	12.0¢	13.25¢	
10- 9-64	3,416.16	16.0¢	16.0¢	18.5¢	
1-28-66	5,200.00	16.0¢	16.0¢	19.0¢	
12-30-66	715.93	17.0¢	17.0¢	18.5¢	
PAN AMERICAN PETROLEUM CORPORATION					
3- 2-50	1,739.52	16.0¢	16.0¢	17.5¢	Pan American # 5
12-31-56	160.00	15.0¢	15.6¢	17.5¢	Pan American # 7
1-18-57	5,239.24	16.0¢	16.0¢	17.5¢	Pan American # 6
3- 5-58	4,802.33	16.0¢	16.0¢	18.5¢	Pan American # 9
3-20-58	16,394.43	16.0¢	16.0¢	18.5¢	Pan American # 8
3-25-60	1,760.00	17.0¢	17.0¢	18.5¢	Pan American #10
11- 6-63	1,250.93	17.0¢	17.0¢	18.5¢	Pan American #11
SHAMROCK OIL & GAS CORP.					
11-19-53 (Kans.)	400.00	15.0¢	17.0¢	17.5¢	Helex #83, 84, 85
5- 5-56	640.00	15.0¢	16.0¢	18.5¢	
4-17-61	57,688.88	11.0¢	12.0¢	13.5¢	Shamrock #4

APPENDIX (Continued)

Seller and Date of Contract	Acreage Dedicated	Initial Contract Price	Contract Price which was being paid at Date of Trial	Maximum Contract Prices Permitted by FPC Order #586	Lessee-Producer Exhibit No.
THE SUPERIOR OIL COMPANY					
6-29-51	160.00	11.0¢	14.069360¢	17.5¢ Kans. 18.5¢ Okla.	Superior # 4
1-23-57	460.00	12.2827747¢	13.176067¢	18.5¢	Helex #83, 84, 85
6-27-63	320.00	17.0¢	17.0¢	18.5¢	
TEXACO, INC.					
3- 8-55	392.55	9.8262¢	11.8262¢	13.25¢	Texaco #16
11- 1-55	560.00	9.8262¢	11.8262¢	13.25¢	Texaco #15
6-27-56	240.00	15.0¢	17.0¢	18.5¢	Texaco #18
10- 3-57	160.00	15.0¢	17.0¢	17.5¢	Texaco #21
10- 3-57	160.00	16.0¢	16.0¢	18.5¢	Texaco #22
7-29-60	153.80	15.0¢	15.0¢	18.5¢	Texaco #23
10-28-60	1,120.00	17.0¢	17.0¢	18.5¢	Texaco #24
5- 4-61	1,182.00	16.0¢	17.0¢	18.5¢	Texaco #26
5-10-61	303.07	11.0¢	12.0025¢	12.5¢	Texaco #25
12-26-61	80.00	11.0¢	12.0025¢	12.5¢	Texaco #27
2- 7-62	955.17	17.0¢	17.0¢	18.5¢	Texaco #28
2-19-63	4,479.41	17.0¢	17.0¢	19.0¢	Texaco #31
6-13-63	2,800.06	17.0¢	17.0¢	18.5¢	Texaco #32
7- 3-63	1,807.64	17.0¢	17.0¢	18.5¢	Texaco #34
9- 8-64	925.94	16.0¢	16.0¢	18.5¢	Texaco #35
3-13-65	160.00	17.0¢	17.0¢	18.5¢	Texaco #36
3-18-65	1,560.12	17.0¢	17.0¢	18.5¢	Texaco #37
Aggregate Total Acres	483,209.15				

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-243

FILED
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E. ROBERT SEAVER, CLERK

PANHANDLE EASTERN PIPE LINE COMPANY,
AND
NATIONAL HELIUM CORPORATION,
Petitioners,
VS.
MOBIL OIL CORPORATION, et al.,
AND
RALPH GROUNDS, et al.,
Respondents.

BRIEF OF RESPONDENTS ASHLAND OIL & REFINING COMPANY, CABOT CORPORATION, DORCHESTER GAS PRODUCING COMPANY, HELMERICH & PAYNE, INC. AND TEXACO INC. (Lessee-Producers), IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATUTE

Section 11, Helium Act Amendments of 1960 3

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-243

PANHANDLE EASTERN PIPE LINE COMPANY,

AND

NATIONAL HELIUM CORPORATION,
Petitioners,

VS.

MOBIL OIL CORPORATION, et al.,

AND

RALPH GROUNDS, et al.,
Respondents.

BRIEF IN OPPOSITION OF RESPONDENTS ASHLAND OIL & REFINING COMPANY, CABOT CORPORATION, DORCHESTER GAS PRODUCING COMPANY, HELMERICH & PAYNE, INC. AND TEXACO INC.

The questions presented by this petition are substantially identical with those in No. 71-238. These respondents adopt their brief in opposition filed therein as their brief in opposition here.

We comment only briefly on two assertions made by petitioners, one of which is immaterial and the other inaccurate.

Petitioners' assertions that some of the FPC rate schedules contain contract prices lower than maximum FPC area rates is immaterial. Congress itself has specified that natural gas rates are inapplicable to commingled helium. It has made no distinction between rates which are higher, lower and the same as contract prices. In many instances there are *no* contract prices, as where 20-year term contracts have expired, or will expire. In such instances, unilaterally filed natural gas rates may be placed in effect and no contract price exists.

The settled law of rate regulation requires payment of the reasonable value of the unregulated commodity, helium, in addition to the regulated rates for natural gas. Indeed, parties cannot validly contract to deliver a valuable unregulated commodity in return for payment of only a regulated rate for a regulated commodity or service. *Louisville & N. R. Co.* v. *Central Iron & C. Co.*, 265 U.S. 59 (1924); *Atchison, Topeka and Santa Fe Railway Co.* v. *Bouziden*, 307 F.2d 230 (10 Cir. 1962).

It is also a fact that petitioners fail to show in their table (Petition p. 21) instances where contract prices are higher than FPC rates. They fail to show refunds paid under FPC orders pursuant to rate settlements reducing contract prices. They fail to note that most of the contracts they show are primarily smaller contracts covering deep gas zones below the base of the Hugoton gas zones containing the primary source of helium.

INTERPLEADER JURISDICTION

Petitioners are not accurate in stating that the subject of interpleader was limited to so-called "title" to helium. Both lower courts, with agreement by petitioners, found that the interpleader "fund" consisted of proceeds paid Helex companies for helium. (A. 6a, 67a, in No. 71-238).

Moreover, while the lower court held that gas contracts initially intended to convey title to helium as part of the delivered gas, it further held under elementary principles of contract law that failure of the Helex companies to make required payment for the unregulated helium resulted in failure of title. (A. 38a in No. 71-238).

Thus, the Court of Appeals correctly determined that it had jurisdiction of lessee-producer claims to a portion of the interpleader "fund" representing reasonable value of the helium in its commingled state. This specious Helex argument was never made in these cases until oral argument below, and was properly rejected. (A. 33a in No. 71-238).

CONCLUSION

The decision below is manifestly correct in its application of Section 11 of the Helium Act Amendments of 1960. The decision follows and applies the law of rate regulation as enunciated by this Court for many years.

The decision will affect only the litigants herein, and one or two other parties similarly situated.

Petitioners' technical arguments are insubstantial and incorrect.

The petition should be denied.

Respectfully submited,

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PANHANDLE EASTERN PIPE LINE COMPANY,
and
NATIONAL HELIUM CORPORATION,
Petitioners,
VERSUS
MOBIL OIL CORPORATION, ET AL.,
and
RALPH GROUNDS, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF IN OPPOSITION OF MOBIL OIL CORPORATION, ET AL.

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September, 1971

In the
Supreme Court of the United States
OCTOBER TERM, 1971

No. 71-243

PANHANDLE EASTERN PIPE LINE COMPANY,
and
NATIONAL HELIUM CORPORATION,
Petitioners,

VERSUS

MOBIL OIL CORPORATION, ET AL.,
and
RALPH GROUNDS, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF IN OPPOSITION OF MOBIL OIL CORPORATION, ET AL.

This brief is submitted by seven of the twelve lessee-producer respondents, which seven are Mobil Oil Corporation, Cities Service Oil Company, Gulf Oil Corporation, Amoco Production Company (formerly Pan American Petroleum Corporation), Diamond Shamrock Corporation, The Superior Oil Corporation, and Mapco Production Company.

The questions presented by this petition are identical with the questions presented by the petition in No. 71-238, *Northern Natural Gas Co., et al.* v. *Mobil Oil Corp., et al., and Ralph Grounds, et al.* Our brief in opposition there is adopted as our brief in opposition here.

The two cases are not different because the petitioners here have, but the petitioners there have not, furnished a tabulation of rate schedules under which they are paying less than the maximum just and reasonable area rate because of contractual limitations. This tabulation is both incomplete and irrelevant. Of the 87 rate schedules tabulated covering 483,000 acres only 19 covering 173,000 acres are in the Hugoton-Panhandle field, which is the nation's largest gas field and its primary source of helium-bearing natural gas. The table does not show the rate schedules in which the contract price is the same or higher than the service rate, or the comparative volumes of helium-bearing natural gas purchased under rate schedules having service rates which are higher, lower, and the same as contract prices.

The petition asserts that this table shows that FPC rate regulation "does not justify judicial intervention with respect to these contracts" (Pet. 15). But intervention has been Congressional, not judicial, and Congress has said in the Natural Gas Act that the service rates shall apply to sales of natural gas, and in § 11 of the Helium Act that they shall not apply to sales of commingled helium. Congress has made no distinction between the rates which are higher, lower, and the same as contract prices, or instances in which there is no contract price, but only a unilaterally filed service rate.

If it is to be implied from this tabulation that lessee-producers may recover the reasonable value of commingled helium when the contract price is the same or higher than the maximum just and reasonable area rate, the only producers who would be denied recovery would be those who are already receiving less than the maximum area rate for natural gas. This would be a rank preference and prejudice which violates § 4(b) of the Natural Gas Act. 52 Stat. 822, as amended, 15 U.S.C. § 717c(b).

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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